APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH A. FESSLER and ANN FESSLER, his wife Plaintiff	:	
vs.	:	
REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES-BARRE,PA.; KEYSTATE BAKERY, ZATCOFF,INC., WOOD STREET,WILKES-BARRE,PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PHILADELPHIA,PA.; SECRETARY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,WASHINGTON,D.C. Defendants	:	CIVIL ACTION NO. 80-0141

MEMORANDUM AND ORDER

Plaintiffs Joseph A. Fessler and Ann Fessler, his wife, filed the present action against the Redevelopment Authority of Wilkes-Barre,Keystate Bakery,Zatcoff, Inc.,the Department of Housing and Urban Development and the Secretary of HUD in Washington,D.C. on February 8, 1980. Plaintiffs were owners of several properties which were condemned by the Redevelopment Authority of the City of Wilkes-Barre in 1973. The sole remaining Defendant is the Wilkes-Barre Redevelopment Authority[1]

[1] On June 16, 1980 the Court entered an Order dismissing Keystate Bakery and Zatcoff,Inc. On July 28,1980 the Court dismissed the Department of Housing and Urban Development and the Secretary of HUD.(Documents #15 and #19).

which filed a motion for summary judgment along with a support-in brief on November 14, 1980. Because the Court has determined that it lacks jurisdiction over the subject matter of the controversy, we will enter an Order today dismissing Plaintiffs' claim.

Defendant's first argument is that Plaintiffs' Complaint fails to comply with Federal Rule of Civil Procedure 8(a) (1) which calls for a "short and plain statement of the grounds upon which the Court's jurisdiction depends." Plaintiffs have failed to allege any basis for federal court jurisdiction. For this reason alone Plaintiffs' case warrants dismissal. See Chasis v. Progress Manufacturing Co.,382 F. 2d 773 (3rd Cir 1967).

Plaintiffs entitle their Complaint an "Appeal and Review " of the payments made to them in the course of their eminent domain procedures in the Luzerne County Court of Common Pleas. They use the terms "negligence" and "defects" to describe the procedure of the Redevelopment Authority; they speak of their "dissatisfaction" with the compensation awards, and they ask the Court to award them damages for the " injustice" done to them in connection with the condemnation. The only possible federal claim would be an action for deprivation of

property without due process of law. In order to make such a claim Plaintiffs must, of course, allege a denial of a right secured by the Constitution or laws of the United States. Basista v. Weir, 340 F. 2d 74, 79 (3rd Cir. 1965). Taking as true the allegations of the Complaint, Cooper v. Pate, 378 U.S. 546(1964), the Court cannot find a federally protected right that has been violated.

Plaintiffs claim, in effect, that their property has been taken without just compensation. Article I, Section 10 of the Pennsylvania Constitution provides that " private property[shall not] be taken or applied to public use, without authority of law and without just compensation being first made or secured." And under the Eminent Domain Code of 1964, 26 P.S. 1-101 et seq., the Commonwealth has established a procedure which "fully protects the rights of the property owner and guarantees to him the constitutional safeguards to which he is entitled, including appropriate appellate review".

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2 In fact we note that inasmuch as Plaintiffs seek damages and attorneys' fees, they are attempting to proceed under 42 US.C. § 1983. Therefore, in addition to the other reasons set forth in this Memorandum, we point out that the Redevelopment Authority is not a "person", and is therefore not a proper party under 42 U.S.C. 1983. This fact alone would support the Court's dismissal of the present action.

Valley Forge Golf Club v. Upper Merion Township, 422 Pa. 227,230, 211 A. 2d 292,293 (1966); KOA v. Red Lion Municipal Authority, 381 F. Supp. 1163 (M.D.Pa. 1974) (Sheridan, C.J.). Plaintiffs allege certain defects in the state procedure, and they voice their dissatisfaction with their award, but they point out no constitutional infirmity in the state court procedure. Simple dissatisfaction with the result does not amount to a constitutional violation. As has been held in this Circuit, the Pennsylvania Constitution and Eminent Domain Code fully preserve all the constitutional rights due Plaintiffs with respect to the taking of public property. Elterich v. City of Sea Isle City, 477 F. 2d 289 (3rd. Cir. 1973). In addition adjudication of the claims presented by Plaintiffs would constitute an unwarranted intrusion into the jurisdiction of the state courts. KOA, supra; Elterich, supra; Kadash v. City of Williamsport, 362 F. Supp. 1343 (M.D. Pa.1973).[3]

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[3] See also 26 P.S. 1-401 which vests jurisdiction for "all condemnation proceedings " in the court of common pleas of the county in which the property is located.

The only remaining claims discernable from Plaintiffs' Complaint amount simply to a request for an appeal of the amount they were originally awarded.

They entitle their Complaint an " Appeal and Review" ; they complain of defects in the state court procedure, specifically, they were not provided with written appraisals, and their tenants were "arbitrarily moved without notice." Plaintiffs state that they were dissatisfied with the amounts they received and were not fully informed of their rights. If Plaintiffs were truly dissatisfied with the amounts they received, their right of appeal existed in the state courts. The Federal Courts do not sit as courts of review over alleged errors of state courts. Elterich, supra at 291; see Martin v. Creasy, 360 U.S. 219 (1959). Plaintiffs admittedly have accepted the profits of the eminent domain sales of their property. They had a right to appeal any adverse ruling in the state courts in a system that is fully equipped to a safeguard their property rights. Not only in the pleadings and record of this case, but even in the farthest reaches of the Court's imagination, there is simply no basis for the Court's jurisdiction over the

present controversy.

Defendant has raised several other substantive grounds for its motion to dismiss. It claims that res judicata bars the present action, that Plaintiffs' have released or waived their claims, and that Plaintiffs have failed to state a claim. Because we hold today that the Court lacks jurisdiction, we will not address these claims. Accordingly, because the jurisdiction of this Court was never asserted, and because the Court is convinced that it does not exist, upon the motion of Defendant the Court will dismiss the present action without further proceedings.[4]

Richard P. Conaboy
United States District Judge

DATED: NOVEMBER 20,1980

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[4] Federal Rule of Civil Procedure 12(h) (3) allows the Court to dismiss an action "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter." See 7 Wright & Miller, Federal Practice and Procedure:Civil Section 1393 (2d Ed. 1979). The Court will therefore dismiss the present action without awaiting Plaintiffs' responsive brief. In addition, the record indicates that Plaintiffs failed to file a brief in opposition to the two previous motions to dismiss filed in this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH A. FESSLER and ANN FESSLER, his wife	:	
Plaintiff	:	
vs.	:	
REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES-BARRE, PA.; KEYSTATE BAKERY, ZATCOFF INC.; WOOD STREET, WILKES-BARRE, PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PHILADELPHIA, PA.; SECRETARY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, D.C.	:	CIVIL ACTION NO: 80-0141
Defendants	:	

ORDER

NOW, this 20th day of November, 1980 in accordance with the attached Memorandum, the above-captioned case is hereby dismissed.

Richard P. Conaboy
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 80-2807

FESSLER, JOSEPH A., FESSLER, ANN, his wife,
Appellants

vs.

REDEVELOPMENT AUTHORITY, CITY OF WILKES-BARRE, PA.; KEYSTATE BAKERY, ZATCOFF INC., WOOD STREET, WILKES-BARRE, PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPEMENT, PHILADELPHIA, PA.; SECRETARY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C.
Appellees

(D.C. Civil No. 80-0141)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Submitted Under Third Circuit Rule 12 (6)

April 5, 1982

Before: GIBBONS, MARIS AND GARTH, Circuit Judges

JOSEPH A. FESSLER
ANN FESSLER
RD#1
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Appellants Pro Se

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City of Wilkes-Barre, Pa.

JUDGMENT ORDER

Joseph and Ann Fessler appeal from a final order dismissing their complaint against the Redevelopment Authority, City of Wilkes-Barre, Pa., and others, for lack of subject matter jurisdiction. There is no diversity of citizenship and no claim pleaded arising under the constitution or laws of the United States.

It is ORDERED and ADJUDGED that the judgment of the district court is affirmed. Costs are taxed in favor of appellee.

BY THE COURT,

Circuit Judge John Gibbons

DATED: April 5, 1982

Attest:

Sally Mrvos, Clerk